



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

HM12/0906

OSTROLENK FABER GERB & SOFFEN LLP
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NEW YORK NY 10036

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/687,144	10/13/00	017	SPIVACK, P	1614 09/06/01
First Named Applicant	DOMENICO, 35 USC 154(b) term ext. = 0 Days.			

TITLE OF INVENTION METHOD AND COMPOSITION FOR INHIBITING BACTERIA

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
1	P/2526-22 (R	424-653.000	Z97 UTILITY	YES	\$620.00	12/06/01

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

HOW TO RESPOND TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give application number and batch number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PATENT AND TRADEMARK OFFICE COPY

Notice of Allowability

Application No.
09/687,144

Applicant(s)
Domenico

Examiner
Phyllis G. Spivack

Art Unit
1614



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed June 18, 2001.
2. ☒ The allowed claim(s) is/are 1, 2, and 4-18.
3. ☐ The drawings filed on _____ are acceptable as formal drawings.
4. ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
*Certified copies not received: _____

5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION.** ~~This three month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.126(a).~~

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
7. ☐ Applicant MUST submit NEW FORMAL DRAWINGS
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No. _____.
(b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the examiner.
(c) ☐ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449), Paper No(s). _____ | 6 <input type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| 9 <input type="checkbox"/> Other | |

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REASONS FOR ALLOWANCE

The following is an Examiner's statement of reasons for allowance:

In the first Office Action, Paper No. 4, claim 1, 2 and 4-18 were rejected under 35 U.S.C. 251. The originally filed reissue declaration was defective because it failed to describe every actual error in the patent.

In response, Applicant has submitted a new Reissue Declaration describing the actual errors. Accordingly, this rejection of record is withdrawn.

Composition claims 1-6 were rejected in the first Office Action under 35 U.S.C. 103 as being unpatentable over Friedheim, GB 712,828.

It was asserted Friedheim teaches therapeutically active compositions comprising compounds wherein a bismuth-containing salt is complexed to a mercapto compound. It is noted Friedheim discloses a ratio of bismuth:sulfur of 1:2 near the bottom of column 2 on page 2. However, Applicant argues the claimed molar ratio range of 1:1 to approximately 3:1 was not known for the activities associated generally with bismuth compounds at the time of Friedheim's publication. Further, the claimed molar ratio is the most efficacious proportions in order to reach the antibacterial therapeutic endpoint that the present invention teaches.

Applicant's argument is found persuasive and the rejection of record under 35 U.S.C. 103 is withdrawn. Claims 1, 2 and 4-18 are allowed in view of the contemporary knowledge of the art.

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Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis Spivack whose telephone number is (703) 308-4703.

September 3, 2001

A handwritten signature in cursive script that reads "Phyllis Spivack".

**PHYLLIS SPIVACK
PRIMARY EXAMINER**